

## **City of Reading Charter Board**

Annual Report 2011

<b><u>Summary of Board Activity</u></b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b><u>Education</u></b>						
Orientation Sessions Conducted	4	1	0	0	2	0
BCTV Programs	5	6	5	6	1	0
Community Presentations	-	-	-	-	1	-
<b><u>Advisory</u></b>						
Requests Received	4	2	6	7	3	5
Opinions Issued	4	2	4	7	3	5
<b><u>Enforcement</u></b>						
Complaints Received	10	9	4	3	5	0
Complaints Withdrawn	0	0	1	0	0	0
Complaints Dismissed	4	7	2	0	2	0
Findings report Issued	3	0	2	0	3	1
Evidentiary Hearings	1	0	1	0	0	0
Final Orders Issued	2	1	1	0	1	3
Rulings on Appeal	1	1	1	1	1	1

### **I. Education**

No newly elected officials were seated to City Council during 2011; therefore, comprehensive orientation was deferred. The Board has continued to collaboratively update a web access site where Board information, forms, Advisory Opinions, and Final Orders can be accessed by City officials and the public.

### **II. Advisory**

The Board rendered five advisory opinions concerning matters of home rule and enforcement of the City Charter.

#### **Advisory Opinion #23 – Issued May 4, 2011** **Regarding Payment of City Funds; Charter Section 607**

The Board was asked by the President of Council whether the Community Development department's new procedure of issuing its own checks and paying its own invoices violated the Charter. Answering the general question of whether any individual City Department may access city funds or money from the City Treasury by printing its own checks or paying its own invoices, the Board answered in the negative. The Board opined that no City Department, nor the Mayor, City Council, or City Boards, Commissions, or Agencies may print or issue its own checks and pay its own invoices.

Advisory Opinion #24 – Issued April 13, 2011  
Regarding Certain Appointments to Boards and Commissions

The Board was asked three questions by the City Solicitor regarding certain appointments to Boards and Commissions. In response the Board opined that a) a paid part-time employee may not be appointed to a board or commission created under Charter Article X and such appointment is barred by the Charter; b) the Mayor's chief of staff serving on the Reading School Board is not prohibited by the Charter or Administrative Code, and c) the Mayor's appointment of his chief of staff's spouse to the Stadium Commission, or any other Article X Board or Commission, does not violate the Charter so long as all other qualifications stated under Charter Section 1002 are met.

Advisory Opinion #25 – Issued June 20, 2011  
Regarding City Councilors serving on Recreation Commission

The President of Council asked whether members of City Council could concurrently sit on the newly established Recreation Commission. The Board opined that the Intergovernmental Cooperation Act, a statute of uniform and statewide application, is the law governing the Recreation Commission and as such the Charter restrictions outlined in Article X are inapplicable. Therefore, members of City Council may concurrently serve as members of the Recreation Commission.

Combined Advisory Opinions #26 & #27 – Issued December 29, 2011  
Regarding Filling the Vacancy of the Office of City Council President

The Board received two requests for Advisory Opinion relating to filling the upcoming vacancy of City Council President; one request came from Linda Kelleher on behalf of City Council, the other was submitted by Dr. Gary Wegman, a member of the Act 47 Advisory Board. In response to specific questions presented, the Board opined that,

- 1) any appointee must be a qualified voter who has resided in the city continuously for a period of one year prior to May 14, 2009 (date of the last primary election for the office of City Council President),
- 2) the definition of qualified voter remains as stated in Advisory Opinion #5,
- 3) the internal rules of Council should govern the application and recommendation process.
- 4) the Charter does not limit a Councilor from voting on the matter, so long as such a vote occurs in a Charter compliant manner, and finally
- 5) all qualified residents may be considered to fill the vacancy.

### **III. Enforcement**

#### **Investigation #29 – Re: Vaughn Spencer, City Council President** **Final Order Issued February 8, 2011**

The Board ordered public censure of Council President Vaughn Spencer for violating Charter Section 212(d) and Administrative Code Section 1-114(5), holding that regardless of whether the City Solicitor calls for or announces an executive session, the ultimate responsibility to call or announce an executive session rests with the presiding officer. The Board further ordered Mr. Spencer to cease and desist from calling, permitting to be called, participating in, and presiding over, any executive session meeting of City Council, or any committee thereof, which is not compliant with the Sunshine Act and does not comply with the specific directory language of Section C of the Final Order. The Final Order was not appealed and stands as issued.

#### **Investigation #30 – Re: Investigation of Charles D. Younger, City Solicitor** **Final Order Issued March 4, 2011**

The Board ordered public censure of City Solicitor Charles Younger for violating Charter Section 212(d) and Administrative Code Section 1-114(5), holding that Mr. Younger's failure to provide legal advice in compliance with the Charter was an indirect violation of Charter Amendment I, and that although the President of Council had the ultimate responsibility to call or announce the executive session, the City Solicitor violated the Charter and Administrative Code by advising to be called, or failing to counsel against the calling of, and executive session that did not comply with the Sunshine Act. The Board further ordered Mr. Younger to cease and desist from calling, permitting, causing or advising to be called, and participating in, any executive session meeting of City Council, or any committee thereof, which is not compliant with the Sunshine Act and does not comply with the specific directory language of Section C of the Final Order. The Final Order was not appealed and stands as issued.

#### **Investigation #31– Re: Investigation of Reading City Council** **Final Order Issued April 25, 2011**

The Board ordered public censure of City Council for violating the Charter by adopting Bill #24-2007, which impermissibly expands the role of City Clerk, constitutes an impermissible attempt to amend the initiative and referendum process of Charter Article XI, and violates Charter Section 1204. The Board further ordered that City Council, the City Clerk, and the office of the City Clerk shall cease and desist from enforcing any aspect of the Ordinance, including ceasing to refuse to accept or certify any paper, petition or signature presented for filing or submission which is in compliance with Charter Article XI, and refusing to act in accordance with Charter Article XI as applied to the initiative and referendum process. The Board further specified that Ordinance 24-2007 shall be treated as null, void, and stricken for all purposes.

On May 25, 2011 City Council, represented by their Solicitor Charles Younger, filed a petition for review before the Berks County Court of Common Pleas. The case was briefed by both parties and heard for argument on December 5, 2011 before Judge Jeffrey Sprecher.

On December 9, 2011 Judge Sprecher denied the appeal and sustained the Final Order of the Charter Board in full. On January 6, 2012 City Council formally appealed to the Commonwealth Court.

#### **IV. Administrative Issues:**

##### **a) Membership**

- Board Chair Susan Gibson was reappointed to a five year term ending April 26, 2015, following protracted discussions with City Administration and City Council. The Board hopes to firmly establish the precedent of automatic reappointment of its members barring clear incompetence, thus allowing Charter Board members liberty, as quasi-judicial appointees, to interpret and enforce the Charter in an environment free from political pressure.
- Board member Gerald Richter was reappointed to a five year term ending April 26, 2016.
- The Board has not received a response to the communication of September 17, 2010, advising City Council that Bill #59-2010 fails to conform to the Charter provisions of Amendment I regarding the process of removal for Charter Board members. The Board had advised that the Ordinance should be immediately rescinded or amended to conform to the Charter.

##### **b) Budget**

- The Board maintained an ongoing dialogue with City Council regarding the Charter Board budget, approved at \$20,000 for 2011 with expenditures through December billings approximating \$54,178.08.

##### **c) Projects**

- The Board, with legal assistance from High Swartz, has initiated a Charter annotation project. The Board's goal is to incorporate and reference all Charter relevant case law and Advisory Opinions. Work started during the summer of 2011 and continues through the present.
- The Board, in partnership with its Solicitor Eric Smith, has undertaken an exhaustive review of the Pennsylvania Sunshine Act and Right to Know Law, focusing on their applicability to the Charter Board and its processes. As a result of these endeavors, on October 18, 2011 the Board designated Susan Gibson as the Open Records Officer for the Charter Board. The Board has obtained a City sponsored email account and is in the process of posting the process for open records requests on the city website.

Respectfully submitted,  
Susan J. Gibson, Chair  
City of Reading Charter Board  
January 31, 2011